

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: LTDS CORPORATION, Complainant, v. IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM, Respondent.	DOCKET NO. FCU-00-4
--------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------

**ORDER REQUIRING INTERCONNECTION PURSUANT
TO INTERCONNECTION AGREEMENT**

(Issued December 22, 2000)

On August 28, 2000, LTDS Corporation (LTDS) filed a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). LTDS's complaint was filed pursuant to Iowa Code §§ 476.101(8) and 476.3(1) (1999) and 199 IAC ch. 6. In the complaint, LTDS alleged Iowa Telecom was refusing to interconnect with LTDS in violation of federal and state statutes and the interconnection agreement between LTDS and Iowa Telecom, which was previously approved by the Utilities Board (Board).

LTDS requested immediate relief in the form of an order directing Iowa Telecom, during the pendency of this matter, to interconnect with LTDS in the manner requested by LTDS. The Board issued an order shortening the time for Iowa

Telecom to file an answer and setting a hearing to address the request for immediate relief.

On September 11, 2000, the parties filed a joint motion stating they had entered into a written agreement with respect to the request for immediate relief and asking the Board to cancel the hearing on that request.

In its answer filed September 7, 2000, Iowa Telecom disputed that it had refused to interconnect with LTDS. According to its answer, Iowa Telecom disagrees with the interpretation of LTDS as to how Internet traffic should be exchanged between the parties. More specifically, the dispute related to whether Iowa Telecom was required to provide local interconnection trunks, at no cost to LTDS, for traffic that was originated by Iowa Telecom customers, bound for LTDS's Internet service provider (ISP) customer, Local Internet Service Company (LISCO.)

Qwest Corporation (Qwest) filed a petition to intervene, which was granted by the Board at the hearing.

Iowa Code § 476.101(8) (1999) provides, in relevant part, that when the Board initiates formal complaint proceedings in response to a written complaint regarding a local exchange carrier's compliance with sections 476.96 through 476.102, "[t]he board shall render a decision in the proceeding within 90 days after the date the written complaint was filed." Thus, the deadline for Board action in this docket was November 27, 2000. At the hearing held November 8 and 9, 2000, the parties requested the Board revise the previously-established briefing schedule, extending it beyond the November 27, 2000, deadline for Board action, to allow additional time to

prepare the initial briefs and to permit the filing of reply briefs. The parties agreed to extend their right to a Board decision in this complaint proceeding to December 22, 2000.

FACTUAL BASIS OF THE COMPLAINT

LTDS requested physical interconnection of the networks of LTDS and Iowa Telecom for the purpose of exchanging telecommunications traffic. LTDS has repeatedly indicated that this complaint is not about the issue of reciprocal compensation for transport of the traffic.

It is undisputed that LISCO is an Internet service provider, with its principal place of business in Fairfield, Iowa. Also undisputed is that LISCO formed a wholly-owned subsidiary, Local Telephone Data Services Corp. (LTDS), and that LTDS was certificated as a competitive local exchange carrier on September 20, 1999. According to testimony at the hearing, the only customer of LTDS is its parent, LISCO.

LTDS adopted the interconnection agreement between GTE Midwest Incorporated (GTE) and AT&T Communications of the Midwest, Inc. Iowa Telecom is the successor to GTE and agreed to honor all of GTE's interconnection agreements.

TELEPHONE EXCHANGE TRAFFIC

The interconnection agreement between LTDS and Iowa Telecom defines "local traffic" as:

Local traffic for purposes of interconnection and mutual compensation under the agreement means traffic: (1) that originates and terminates in the same GTE exchange area . . .

The Telecommunications Act of 1996 (Act) requires all telecommunications carriers “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”¹

The interconnection obligation expressly applies to two categories of traffic: telephone exchange traffic and exchange access traffic. According to the D.C. Circuit Court of Appeals, these two categories of traffic are the only categories of traffic that exist.²

If these two categories of traffic are the only categories available, ISP-bound traffic **must** be classified as either telephone exchange traffic or exchange access traffic. With only those two options, the Board finds that ISP-bound traffic, which the evidence shows to have characteristics of both kinds of traffic, is more like telephone exchange traffic. Further, the Board finds that the term “local exchange traffic” as defined in the interconnection agreement and quoted above, must be synonymous with “telephone exchange traffic.”

PROVISION OF LOCAL INTERCONNECTION TRUNKS

Making a determination that ISP-bound traffic is telephone exchange traffic, and is covered in the interconnection agreement as local exchange traffic, does not end the examination that must be made in this proceeding. The Board is concerned,

¹ 47 U.S.C. § 251(a)(1).

² *Bell Atlantic Telephone Co. v. Federal Communications Commission*, 206 F.3d 1 (D.C. Cir. 2000).

based on the facts that have been presented in this proceeding that there may not be any mutual exchange of traffic. According to 47 C.F.R. § 51.100(b)

A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well. (Emphasis added).

Based on the testimony and evidence presented, currently, LISCO is the only customer of LTDS. The Board does not want to restrict competition by dictating how a new CLEC should solicit customers or by requiring that it not sign an ISP as its first customer. Equally, the Board is very troubled by the possibility that a company might become a certificated local exchange company for the sole purpose of obtaining uncompensated or undercompensated interconnection to the incumbent's telecommunications network at the expense of other telecommunications companies or end-user customers. It is questionable that LTDS can, over time, be viewed as a CLEC if it continues to have only LISCO for a customer. The interconnection required under the federal act is intended to promote local exchange competition and is for the direct benefit of CLECs, not ISPs. LTDS must show by its future actions that it is a bona fide CLEC by aggressively marketing competitively priced services throughout its service territory. It must win customers if it is to continue to receive the benefits, such as those ordered today, which are accorded a CLEC. If LTDS fails to do this, the Board will entertain a complaint pursuant to Iowa Code §§ 476.29(5) and (9) aimed at revoking the CLEC certificate granted by the Board to LTDS.

To summarize the Board's decision, under the interconnection agreement, which is based upon a premise that there will be a mutual exchange of traffic, all local interconnection trunks requested by a CLEC are to be provided by Iowa Telecom, at no cost to the CLEC. The Board has determined that the ISP-bound traffic is local exchange traffic as defined in the interconnection agreement which, in turn, requires that Iowa Telecom provide the local interconnection trunks for which LTDS places an order. However, continuation of these benefits of interconnection are likely to depend on whether LTDS competes effectively for customers other than LISCO.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is ordered to provide interconnection with LTDS Corporation for the purpose of exchanging local exchange traffic, including ISP-bound traffic, according to the interconnection agreement that was previously approved by the Board and consistent with the discussion in the body of this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

DISSENT

I must respectfully dissent from the decision made by my colleagues in the complaint proceeding brought by LTDS against Iowa Telecom. As this is a complaint proceeding centering around a contractual dispute between two parties, it is unnecessary to set policy in this docket.

The majority's decision to make a determination that ISP-bound traffic is "local" traffic sets precedent that will have an effect on the state's entire telecommunications industry. However, it is not necessary to reach a decision as to the proper classification of ISP-bound traffic in order to decide the issues brought by the Complainant in this docket.

LTDS has requested that the Board require Iowa Telecom to provide local interconnection trunks pursuant to the Board approved interconnection agreement of the parties. Iowa Telecom has an obligation under federal and state law to provide interconnection for the exchange of traffic, regardless of the type of traffic, "directly or indirectly with the facilities and equipment of other telecommunications carriers."³ Iowa Telecom has not breached its duty to interconnect. In addition, under Iowa Code § 476.101(2), a local exchange carrier cannot "discriminate against another provider by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates." Iowa Telecom has indicated that it treats its own Internet services in the same fashion as it treated LISCO when it was an ISP customer of Iowa Telecom.

³ 47 U.S.C. § 251(a)(1).

The real issue is how Iowa Telecom is to be compensated for that interconnection. Again, one need only look to state law to see that the refusal of Iowa Telecom to meet LTDS' demands that these local interconnection trunks be provided free of charge was not unreasonable. Iowa Code § 476.11 (1999) provides that the Board may resolve complaints where a "utility has failed to provide just, reasonable, and nondiscriminatory arrangements for interconnection of its telecommunications services with another telecommunications provider."

A finding that the ISP-bound traffic is tantamount to local traffic for purposes of interpreting the interconnection agreement means that Iowa Telecom is required to provide any and all local interconnection trunks requested by LTDS, at no cost to LTDS. This is based upon a premise that underlies the concept of local interconnection that there will be a mutual exchange of local traffic. That premise cannot be fulfilled where the only customer of LTDS is an ISP. Clearly, all traffic will be going in one direction, as evidenced by testimony at the hearing that interconnection between LTDS and Iowa Telecom currently is being accomplished by use of one-way interconnection trunks.

The end result of the majority's determination that ISP-bound traffic is covered by the interconnection agreement as local traffic is to place an unjust and unreasonable burden upon Iowa Telecom. Iowa Telecom will be required to make any and all capital expenditures necessary to fulfill all requests for interconnection facilities made by LTDS or any other CLEC, for the purpose of connecting the local customers of Iowa Telecom to the ISP customers of LTDS or other CLECs. The

majority's decision creates an inequity by providing a windfall to LTDS, and any other CLEC whose customer base includes primarily ISP customers, while adding substantial, and potentially endless, costs to Iowa Telecom. These additional costs to Iowa Telecom will ultimately be paid by the customers of Iowa Telecom, rather than by the ISPs who have caused the costs to be incurred.

The policy decision of my colleagues has created a situation where the result is unreasonable, inequitable, and unwarranted.

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 22nd day of December, 2000.